

IN THE DISTRICT COURT OF APPEAL  
FOR THE FIRST DISTRICT OF FLORIDA

Case No. 1D19-3106

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LEONARDO LYNCH,

Petitioner,

v.

FLORIDA DEPARTMENT OF LAW ENFORCEMENT,

Respondent.

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On Petition for Writ of Mandamus

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**RESPONSE TO ORDER TO SHOW CAUSE**

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Pursuant to Florida Rule of Appellate Procedure 9.100(j), the Florida Department of Law Enforcement (“FDLE”) hereby responds to this Court’s September 6, 2019 Order to Show Cause why the August 26, 2019 Petition for Writ of Mandamus (“Petition”) should not be granted and avers as follows.

### **BACKGROUND**

Petitioner, Leonardo Lynch (“Mr. Lynch”), attempted to purchase a firearm and, upon receipt of a request for a criminal history record check and review of records, FDLE informed the firearm dealer that Mr. Lynch was prohibited from purchasing a firearm. Mr. Lynch appealed the non-approval to purchase a firearm. (Ex. 1)

On December 20, 2018, in response to the appeal, FDLE sent Mr. Lynch a letter informing him that his attempted purchase of a firearm was denied because his identifying information matched a record in the Federal Bureau of Investigation (FBI) National Instant Check System (NICS), which indicated that, pursuant to Title 18 United States Code Section 922 and section 790.065, Florida Statutes, Mr. Lynch was ineligible to purchase a firearm due to mental competency or court ordered substance abuse treatment. (Ex. 2) The December 20 letter informed Mr. Lynch that he should contact the record owner, New York State Division of Criminal Justice Services, if he believed that he was not the subject of the record, if he believed that there was an error in the record, or if he sought relief from firearm disability based on the record. The letter also indicated that Mr. Lynch would be able to re-appeal

the non-approval if he provided the appropriate documentation from the jurisdiction that owned the record disqualifying him from purchasing a firearm.

Mr. Lynch pursued an appeal of the December 20 letter in this Court. FDLE filed a motion to dismiss the appeal, asserting that this Court lacked jurisdiction to review the letter because the letter was not a final order or quasi-judicial order because FDLE was merely attempting to comply with a legislative mandate to perform a ministerial act. FDLE alternatively argued that, even if the FDLE was not performing a ministerial act, the letter was not a final order because it did not dispose of the case, because it did not indicate that judicial review was available, and because it was not filed with the agency clerk. (Ex. 3)

This Court dismissed Mr. Lynch's appeal of the December 20 letter because, "assuming the letter would otherwise be appealable, the appeal is premature because the order has not been rendered" because it was not filed with the agency clerk. *Lynch v. Florida Dep't of Law Enf't*, 1D19-252, 44 Fla. L. Weekly D1752, 2019 WL 2943305, \*1 (Fla. 1st DCA July 9, 2019) (citations omitted). This Court stated, "To the extent FDLE fails to render an appealable order, Mr. Lynch's recourse is through the filing of a petition for mandamus." *Id.* (citations omitted). However, this Court declined to address whether the letter was a final agency action. *Id.*

Mr. Lynch's counsel subsequently inquired whether FDLE would be filing the December 20 letter with the agency clerk. On August 21, 2019, FDLE responded

that it had not filed the letter with the agency clerk because a non-approval to purchase a firearm was a ministerial act rather than a discretionary agency action and because, even if it was not a ministerial act, the December 20 letter was not a final action on the matter because FDLE remained willing to address the non-approval for Mr. Lynch to purchase a firearm but had not received the necessary additional information from Mr. Lynch. (Ex. 4) The August 21 letter reiterated that Mr. Lynch may challenge the accuracy of the NICS record by filing an appeal directly with the FBI, may seek correction of the record or restoration of firearms rights from the State of New York, or may obtain additional records from the State of New York and that, if Mr. Lynch provided FDLE additional information received from the FBI or the State of New York, his non-approval could be affected.

Mr. Lynch subsequently filed the instant Petition, which requests this Court to compel FDLE to issue a final decision regarding his non-approval to purchase a firearm and to file the decision with the agency clerk.

## **ARGUMENT**

### **I. The requirements for mandamus relief.**

“A writ of mandamus is a common-law writ used to coerce the performance of any and all official duties where the official charged by law with the performance of such duty refused or failed to perform the same.” *State ex rel. Buckwalter v. City of Lakeland*, 150 So. 508, 511 (Fla. 1933). The act sought to be compelled must be



ministerial, rather than discretionary. *See Solomon v. Sanitariums' Registration Bd.*, 155 So. 2d 353, 356 (Fla. 1963). “Entitlement to the extraordinary writ of mandamus requires the petitioner to demonstrate that he has a clear legal right to the performance of the particular action sought, the respondents have a clear legal duty of performance, and no other adequate remedy exists.” *Adams v. State*, 560 So. 2d 321, 322 (Fla. 1st DCA 1990) (citations omitted).

“A necessary prerequisite to obtaining mandamus relief is a showing that the petitioner has made an express, distinct demand for performance of the requested act to the respondent official.” *KKP Holdings, LLC v. Russell*, 1 So. 3d 1287 (Fla. 1st DCA 2009) (citations omitted). Moreover, mandamus ordinarily “will not lie in absence of a showing that the administrative official has refused to perform the duty sought to be coerced upon application or request made therefor in accordance with the laws which establish or create the duty which is sought to be coerced.” *Fair v. Davis*, 283 So. 2d 377, 378 (Fla. 1st DCA 1973).

**II. Mr. Lynch cannot establish that FDLE has a clear legal duty to issue a final decision because the administrative process has not been completed.**

Mr. Lynch requests this Court to compel FDLE “to issue a final decision and file said decision with the agency clerk.” (Pet., p. 24) However, FDLE cannot issue a final decision regarding the non-approval for Mr. Lynch to purchase a firearm. FDLE was unable to resolve Mr. Lynch’s appeal of the non-approval after he questioned the accuracy of the disqualifying record because it was not provided

necessary additional information. Moreover, FDLE remains willing to address the non-approval if the necessary additional information is provided. Since Mr. Lynch has not pursued the next step of seeking correction, rights restoration, or additional records from the agency responsible for the disqualifying record, the administrative process has not yet been completed.

Section 790.065(6), Florida Statute (2018), provides that any person denied the right to purchase a firearm may request a criminal history records review and correction in accordance with rules promulgated by the FDLE. The rule promulgated by the FDLE provides that a potential buyer wishing to appeal a non-approval must complete and provide an appeal form to the FDLE within 60 days or, as an alternative, may appeal directly to FBI in accordance with federal regulations. *See* Fla. Admin. Code R. 11C-6.009(8). Rule 11C-6.009(8) provides that the FDLE will process the appeal request using the procedures described in Rule 11C-8.

After receiving Mr. Lynch's appeal of the non-approval to purchase a firearm, FDLE informed him about the record that disqualified him from purchasing a firearm and directed him to contact the authority responsible for reporting the record. The response by FDLE was compliant with both State and Federal regulations. According to the rules promulgated by FDLE:

If after reviewing the record, the individual believes that the record is incorrect or incomplete, it is the individual's responsibility to contact the agency submitting that part of the record in question. It then will be the responsibility of that agency to determine the merit of the assertion, to make any and all

corrections or deletions that may be required, and to notify FDLE of any corrections or deletions.

Fla. Admin. Code R. 11C-8.001(5) (emphasis added). Moreover, the non-approval by the FDLE was based on a record in NICS. According to the rules promulgated by the United States Department of Justice:

If the individual wishes to challenge the accuracy of the record upon which the denial is based, or if the individual wishes to assert that his or her rights to possess a firearm have been restored, he or she may make application first to the denying agency, i.e., either the FBI or the POC. If the denying agency is unable to resolve the appeal, the denying agency will so notify the individual and shall provide the name and address of the agency that originated the document containing the information upon which the denial was based. The individual may then apply for correction of the record directly to the agency from which it originated. If the record is corrected as a result of the appeal to the originating agency, the individual may so notify the denying agency, which will, in turn, verify the record correction with the originating agency (assuming the originating agency has not already notified the denying agency of the correction) and take all necessary steps to correct the record in the NICS.

28 C.F.R. §25.10(c) (emphasis added). Thus, even if Mr. Lynch chooses an appeal to the denying agency (FDLE) as his administrative remedy, he must still ultimately seek correction with the reporting agency to complete the administrative process and exhaust his administrative remedies.

Since Mr. Lynch questioned the accuracy of the record that disqualified him from purchasing a firearm, FDLE was unable to resolve his appeal of his non-approval to purchase a firearm, Mr. Lynch failed to pursue the next step in the administrative process, and FDLE remains willing to address the non-approval, Mr.

Lynch cannot demonstrate that the administrative process has been completed. Therefore, he cannot establish that he has a clear legal right to the issuance of a final decision or that FDLE has a clear legal duty to issue a final decision.

**III. Mr. Lynch cannot establish that FDLE has a clear legal duty to file a final decision with the agency clerk because such a decision would not be a final order, as defined by section 120.52(7), Florida Statutes (2019).**

Furthermore, even if FDLE could issue a final decision in this matter, Mr. Lynch cannot establish that FDLE has a clear legal duty to file such a decision with the agency clerk. FDLE acknowledges that it has a clear legal duty to file “final orders,” as defined by section 120.52(7), Florida Statutes (2019), with the agency clerk. *See Sowell v. State*, 136 So. 3d 1285, 1287-88 (Fla. 1st DCA 2014) (holding that Department of Revenue was required to file a probable cause review document with the agency clerk because it was a final agency action); *Students for Online Voting v. Machen*, 24 So. 3d 1273, 1273–74 (Fla. 1st DCA 2009) (holding that agency that issued a final order was required to file it with the agency clerk). However, any action by the FDLE in this matter would not be a “final order,” as defined by section 120.52(7), and Mr. Lynch has neither alleged that FDLE has a clear legal duty to file documents that are not final orders with the agency clerk nor identified any legal authority that suggests that such a clear legal duty exists.

Any action by FDLE in this matter would not be a “final order” because the FDLE is merely attempting to comply with a legislative mandate to perform a

ministerial act and is not otherwise acting on its own authority. In *Rowell v. State, Florida Dept. of Law Enf't*, 700 So. 2d 1242, 1243 (Fla. 2d DCA 1997), the Second District Court of Appeal held that a letter informing Rowell that a certificate of eligibility to have her criminal history sealed could not be issued in her case was neither a final agency action under section 120.52 nor a quasi-judicial order because “FDLE was merely complying with—or trying to comply with—a legislative mandate to perform a ministerial act and was not otherwise acting on its own authority.” The appeal was dismissed for lack of jurisdiction, as premature, because Rowell was required to first pursue a remedy in the trial court. *Id.* at 1243-44.

This Court has subsequently relied on the authority of *Rowell* to dismiss appeals against FDLE. *See Reno v. State, Dept. of Law Enf't*, 704 So. 2d 223 (Fla. 1st DCA 1998); *Mitchell v. State, Dept. of Law Enf't*, 704 So. 2d 223 (Fla. 1st DCA 1998); *Greer v. State, Dept. of Law Enf't*, 704 So. 2d 222 (Fla. 1st DCA 1998). This Court has also relied on the authority of *Rowell* to dismiss appeals against other agencies. *See Freedom Life Ins. Co. Of Am. v. State, Dept. Of Fin. Services, Office of Ins. Regulation*, 891 So. 2d 611 (Fla. 1st DCA 2005); *Seratech, Inc. v. Agency for Health Care Admin.*, 866 So. 2d 704 (Fla. 1st DCA 2003); *Physicians Health Care Plans, Inc. v. Agency for Health Care Admin.*, 845 So. 2d 222 (Fla. 1st DCA 2003). Thus, this Court has previously adopted the reasoning in *Rowell*.

The legislature has mandated that the FDLE must review available records to determine whether there are any records related to a potential buyer of a firearm that would disqualify the buyer from purchasing a firearm and then must inform the relevant party of the results of the records review. *See* §790.065(2), Fla. Stat. (2018). This is similar to the legislative mandate for the FDLE to review records to determine whether to issue a certificate of eligibility for sealing of a criminal history record, *see* §943.059(2), Fla. Stat. (2019), which was held to be a ministerial act. Since the function of the FDLE under section 790.065 is similar to its function under section 943.059, its actions pursuant to section 790.065 are also ministerial.

“A ministerial duty is one which is positively imposed by law to be performed at a time and in a manner or upon conditions which are specifically designated by the law itself absent any authorization of discretion to the agency.” *Solomon v. Sanitarians' Registration Bd.*, 155 So. 2d 353, 356 (Fla. 1963) (citation omitted). Under section 790.065, FDLE is required to make its determination based on criteria that is specifically delineated in the statute. FDLE does not exercise any discretion because it does not decide what criteria disqualifies a potential purchaser of a firearm. Moreover, FDLE cannot exercise discretion to correct or update a record because that responsibility lies with the agency reporting the record.

Mr. Lynch argues that the use of the terms “determine” and “decision” in section 790.065 and Rule 11C-6.009 indicate that FDLE exercises discretion. (Pet., p. 16)

However, FDLE also “determines” whether an applicant’s criminal record meets the eligibility requirements for sealing the record, which has been held to be a ministerial act. *See* Fla. Admin. Code R. 11C-7.007(4) (“If the application packet is complete, the Department will review the submitted information and the subject's criminal history record to determine if the specified record meets the requirements for sealing, which are listed in Section 943.059, F.S.”). Thus, use of the terms “determine” or “decision” do not establish that FDLE exercises discretionary authority.

Mr. Lynch also argues that the fact that the FDLE allows internal appeals of non-approvals to purchase firearms indicates that FDLE exercises discretion. (Pet., p. 16) However, FDLE also permits internal appeal of determinations that a criminal record does not meet the eligibility requirements for sealing, which has been held to be a ministerial act. *See* Fla. Admin. Code R. 11C-7.007(5) (“If the specified criminal history record does not meet the requirements for sealing, the Department will send the subject a letter stating the reason for ineligibility with an explanation of appeal rights.”). Thus, the availability of an appeal also does not establish that FDLE exercises discretionary authority.

Moreover, section 790.065, similar to section 943.059, does not refer to a right to a hearing pursuant to Chapter 120 of the Florida Statutes. Conversely, the statute for licenses to carry concealed weapons or firearms explicitly provides that an individual denied a license has the right to a hearing pursuant to Chapter 120. *See*

§790.06(6)(c)(2), Fla. Stat. (2019) (“If the Department of Agriculture and Consumer Services denies the application, it shall notify the applicant in writing, stating the ground for denial and informing the applicant of any right to a hearing pursuant to chapter 120.”). The lack of such language in section 790.065, in contrast with the inclusion of the language in another section of the same chapter of the statutes, indicates that the legislature did not consider the determination of whether an individual is prohibited from purchasing a firearm to be an exercise of discretionary authority by FDLE. *See Unruh v. State*, 669 So. 2d 242, 245 (Fla. 1996) (“As a fundamental rule of statutory interpretation, courts should avoid readings that would render part of a statute meaningless. Furthermore, whenever possible courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.”) (citations omitted).

Mr. Lynch argues that he would be denied any judicial review if the non-approval by the FDLE is considered a ministerial act. However, Mr. Lynch has multiple avenues to pursue relief from the non-approval through the administrative process or judicial review. First, Mr. Lynch may seek correction of the record or relief from firearms disability through the New York State Division of Criminal Justice Services. *See* Fla. Admin. Code R. 11C-8.001(5); 28 C.F.R. §25.10(c); N.Y. Mental Hyg. Law §7.09(i)-(j). Second, Mr. Lynch may seek correction of the record through the FBI. *See* Fla. Admin. Code R. 11C-6.009(8); 28 C.F.R. §25.10(d). Third,



Mr. Lynch may bring an action against the appropriate New York agency or against the United States for an order directing that the contested information be corrected or that the firearm transfer be approved. *See* 28 C.F.R. §25.10(f). Finally, if Mr. Lynch can show that he has a clear legal right to purchase a firearm by establishing that the NICS record is erroneous, Mr. Lynch may file a mandamus petition, or other appropriate action, in the trial court to attempt to compel FDLE to approve his purchase of a firearm or to otherwise resolve the matter. *See Rowell*, 700 So. 2d at 1244-45; 28 C.F.R. §25.10(f). Therefore, both administrative review and judicial review of the Mr. Lynch's non-approval are available.

Since a non-approval to purchase a firearm is merely a ministerial act, such a decision is not a final order as defined by section 120.52(7), Florida Statutes (2019). Since Mr. Lynch has not identified any legal authority that suggests that agencies are required to file ministerial decisions or documents that are not "final orders" with the agency clerk, Mr. Lynch cannot establish that FDLE has a clear legal duty to file a decision regarding non-approval to purchase a firearm with its agency clerk.

**IV. This Court should exercise its discretion not to grant the Petition because granting the Petition would be detrimental to the public interest.**

"It is well settled that mandamus is a discretionary writ that is awarded, not as a matter of right, but in the exercise of a sound judicial discretion and upon equitable principles." *State ex rel. Haft v. Adams*, 238 So. 2d 843, 844 (Fla. 1970); *see also Topps v. State*, 865 So. 2d 1253, 1257 (Fla. 2004) ("Since the nature of an

extraordinary writ is not of absolute right, the granting of such writ lies within the discretion of the court. Therefore, extraordinary writs may be denied for numerous and a variety of reasons, some of which may not be based upon the merits of the petition.”). “Every proceeding in mandamus must be determined upon its own setting of facts and the peremptory writ will not be granted where it would serve no useful purpose, or where it would work a hardship or injustice or be detrimental of the public interest.” *State ex rel. Mann v. Burns*, 109 So. 2d 195, 199 (Fla. 1st DCA 1959); *see also State ex rel. Long v. Carey*, 164 So. 199, 206 (Fla. 1935) (holding that, even if relator had a clear legal right for which mandamus was a proper remedy, the writ should not be granted if it would result in disorder, confusion, and disturbance). This Court should exercise its discretion not to grant the Petition because granting a writ of mandamus would be detrimental to the public interest.

FDLE cannot resolve Mr. Lynch’s appeal of his non-approval to purchase a firearm without receiving additional information related to the record that disqualifies him from purchasing a firearm. FDLE is unable to obtain additional information about the record because it is from a New York proceeding and it cannot be released to FDLE because it is a confidential mental health or substance abuse record. *See* N.Y. Mental Hyg. Law §§22.05(b); 33.13(c). Mr. Lynch was informed that he could pursue correction of the record, obtain relief from the firearm disability, or obtain additional information about the record through the State of New York and

provide additional information to FDLE. Mr. Lynch was also informed that he could challenge the accuracy of the record through the FBI. Mr. Lynch may also contest the accuracy or validity of the record by bringing a civil action against the appropriate New York agency, the United States, or FDLE. However, Mr. Lynch inexplicably refuses to pursue any of these adequate remedies.

The public has a safety interest in preventing convicted felons and the mentally ill from possessing firearms. Hence, the Second Amendment does not proscribe laws prohibiting possession of firearms by felons and the mentally ill or imposing conditions and qualifications on the commercial sale of firearms. *See D.C. v. Heller*, 554 U.S. 570, 626–27 (2008). Granting the requested writ of mandamus would remove the responsibility of a potential firearm purchaser to pursue correction of or relief from a mental health adjudication and transform an FDLE non-approval of a firearm purchase into an appealable final agency order, even though FDLE is only mandated to perform the ministerial function of reviewing available records and applying legislatively created criteria. This could create a loophole where potentially dangerous mentally ill or unstable individuals would be able to illegally purchase firearms because FDLE is unable to obtain details of the records of their mental health adjudications. Such a situation would be detrimental to the public's safety interest. Therefore, this Court should exercise its discretion not to grant the Petition even if it determines that the Petition may be granted.

## **CONCLUSION**

Based on the foregoing, Respondent respectfully requests that this Court deny the Petition.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on September 24, 2019, I electronically filed this document by using the Florida Courts E-Filing Portal and that I served a copy of this document through the E-Filing Portal upon the following:

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this response was computer generated using Times  
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